

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of Application by
Northern States Power Company for
ORDER

PROTECTIVE

Approval to Merge with New Century
Energies, Inc. and Related Requests

A protective order is necessary to facilitate the exchange of information in this matter and has been requested by the parties in the following form. Therefore, the Administrative Law Judge makes the following:

ORDER

The parties shall, under the terms of this Protective Order and the attached Nondisclosure Agreement, furnish certain documents, data, information, studies, materials or other matters claimed to be of a confidential, trade secret or otherwise protected nature, except that the parties reserve the right to assert relevant privileges, such as the attorney-client privilege. Such trade secret and protected information may be used in the conduct of the above-captioned matter by the party seeking the requested information.

1. (a) Trade Secret and Protected Information. All documents, data, information, studies materials and other matters furnished or made available pursuant to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery that are claimed by the parties to be of a competitive business nature, trade secret, or otherwise protected shall be furnished pursuant to the terms of this Protective Order, and shall be treated by all persons accorded access thereto pursuant to this Protective Order as constituting trade secret and protected, confidential, competitive, and business sensitive information, and shall neither be used nor disclosed except for the purpose of such proceedings, and solely in accordance with this Protective Order. The Parties reserve the right to assert relevant privileges. All material claimed to be Trade Secret and Protected Information shall be so marked by the party by stamping each individual page with the designation, "**TRADE SECRET**" or similar designation.

(b) Use of Trade Secret and Protected Information and Persons Entitled to Review. All Trade Secret and Protected Information made available to parties other than the Government Agencies pursuant to this Protective Order shall be given solely to counsel for the requesting party and shall not be used or disclosed except for purposes of this proceeding. Access to Trade Secret and Protected Information may be

authorized by said counsel, solely for the purpose of this proceeding, to those persons indicated by counsel as being the party's experts in this matter. Notes made pertaining to or as the result of a review of Trade Secret and Protected Information shall be subject to the terms of this Protective Order. Parties serving computerized information on disk should serve both a confidential "Trade Secret" and non-confidential disk clearly marked as such.

(c) Identification of Persons Receiving Access to Trade Secret and Protected Information. Counsel for each party, other than the Government Agencies, receiving such Trade Secret and Protected Information will provide written notice to the disclosing party listing the names and firm or company affiliation of all experts to whom such information will be disclosed. Such notice will be made in sufficient time prior to receipt of information to provide reasonable opportunity for objection by the disclosing party.

(d) Special Limitation on Use for Third Party Trade Secret and Protected Information. If information sought is claimed by a third party to be trade secret and protected and is to be provided, the party providing such information will provide written notice to the third party indicating the information to be provided; and each party, other than the Government Agencies, receiving such information will provide written notice listing the names and firm or company affiliation of all attorneys and experts to whom such information will be disclosed. Such notice will be made in sufficient time prior to receipt of information to provide reasonable opportunity for intervention or objection by such third parties. Similar notification and opportunity to object will be made in the event that additional attorneys or experts are to be given access by any party, other than the Government Agencies, to third party trade secret or protected information during the course of any such proceeding. No expert gaining access to Third Party Trade Secret and Protected Information may be an officer, director, employee, or major shareholder (holding 5% or more of total issued stock) of any corporation, partnership or other business entity which is a competitor or customer of a third party whose trade secret or protected information is made available hereunder. Any dispute concerning this restriction which cannot be resolved by the parties, may be brought before the Administrative Law Judge for resolution.

(e) Nondisclosure Agreement. Prior to giving access to Trade Secret and Protected Information as contemplated in paragraph (c) above to any expert, whether or not such expert is a person designated to testify in any such proceeding, counsel for the party seeking review of the Trade Secret and Protected Information shall deliver a copy of this Protective Order to such person, and prior to disclosure such person shall agree in writing to comply with and be bound by this Protective Order. In connection therewith, Trade Secret and Protected Information shall not be disclosed to any person who has not signed a Nondisclosure Agreement requiring the person to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreement shall

be delivered to counsel for the providing party prior to the expert gaining access to the Trade Secret and Protected Information. This provision shall not apply to the Government Agencies participating in this proceeding.

2. (a) Reason for Trade Secret and Protected Information Designation. Ten days prior to the due date for filing testimony with the ALJ and the Commission, or as otherwise requested by the Department of Commerce, the party designating material as Trade Secret and Protected Information shall provide a written explanation of the basis for the designation for all discovery so marked.

(b) Use in Pleadings. Where reference to Trade Secret and Protected Information in the sealed record is required in pleadings, discovery, including information requests, cross-examinations, briefs, argument or motions, it shall be by citation of title or exhibit number or by some other non-confidential description. Any further use of or substantive references to Trade Secret and Protected Information shall be placed in a separate section of the pleading or brief and submitted to the Presiding Judge under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed a Nondisclosure Agreement. All the protections afforded in the Protective Order apply to materials prepared and distributed under this paragraph.

(c) In Camera Hearing. Any Trade Secret and Protected Information which must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an *in camera* hearing, attended only by persons authorized to have access to the Trade Secret and Protected Information under this Protective Agreement. Similarly, cross-examination on or making substantive reference to Trade Secret and Protected Information as well as that portion of the record containing references thereto, shall be marked and treated as provided herein.

3. (a) Challenge to Confidentiality. This Protective Order establishes a procedure for the expeditious handling of Trade Secret and Protected Information; it shall not be construed as an agreement or ruling on the confidentiality of any such document.

(b) In the event that the parties hereto are unable to agree that certain documents, data, information, studies or other matters constitute Trade Secret and Protected Information, the party objecting to the classification as Trade Secret and Protected Information shall forthwith submit the said matters to a Presiding Judge for review pursuant to this Protective Order. This provision is expressly recognized not to govern the Department of Commerce or other Government Agencies' obligations or procedures for handling data. Requests to the Department are governed by the Minnesota Data Practices Act.

(c) Any party at any time upon five (5) days prior notice may seek by appropriate pleading to have documents that have been designated as Trade Secret and Protected Information removed from the protective requirements of this Protective

Order. If the trade secret, or other protected nature of this information is challenged, resolution of the issue shall be made by the Presiding Judge after proceedings *in camera* which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential matter shall be present. The record of such *in camera* hearings shall be marked "**TRADE SECRET - SUBJECT TO PROTECTIVE ORDER.**" This provision shall not govern the Department's handling of trade secret or otherwise protected data.

4. **Return.** Unless otherwise ordered, Trade Secret and Protected Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Protective Order, and shall be returned to counsel for the providing party within 30 days after final settlement or conclusion of the applicable matter including administrative or judicial review thereof. Each party shall confirm and certify, by letter from the party or the party's attorney to the other parties or their attorneys, that all copies of Trade Secret and Protected Information and all notes, records (hard-copy, magnetic, electronic, or otherwise), calculations, data, documents or analyses (handwritten, computer-based, or otherwise) relating to or containing any Trade Secret and Protected Information have been returned. This provision shall not apply to the Department of Commerce, Office of Attorney General, or Public Utilities Commission.

5. The files of the Public Utilities Commission, the Department of Commerce and OAG ("Government Agencies") containing trade secret data or otherwise protected information shall be treated as required by Minn. Stat. §§ 13.01 *et seq.* and 138.161 *et seq.*

Dated October 14, 1999.

Steve M. Mihalchick
Administrative Law Judge

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MPUC Docket No. E,G-002/PA-99-

OAH Docket No. 12-2500-12509-2

EXHIBIT A

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application of
Northern States Power Company for
Approval to Merge with New Century
Energies, Inc.

**NONDISCLOSURE
AGREEMENT**

- I have requested review of Trade Secret information from the party that has developed that Trade Secret Information.

I have been presented with a copy of the Protective Order dated October 14, 1999 in the above-captioned case. I have read such Order and agree to be bound by the terms of such order.

Dated this ____ day of _____, ____.

Review

Signature of Person Requesting
of Trade Secret Information

Address: _____

Phone: _____

Fax: _____